

geographic rate integration.

53. We are also not persuaded that we should forbear from applying rate integration to smaller carriers serving high-cost areas on the grounds that they might have difficulty competing against nationwide carriers. These carriers have provided only conclusory allegations of harm and have not shown that they will be unable to compete with larger carriers in a rate-integrated environment, much less that they have satisfied all three of the requirements set forth in Section 10 for exercise of our forbearance authority. Thus, these carriers have failed to make a showing on this record justifying forbearance.<sup>114</sup>

54. We believe that AMSC is required by the plain terms of the 1996 Act to integrate the rates charged for its offshore service into the rate structure for its mainland rates. Further, as with rate averaging, we interpret Section 254(g) to extend to all providers of interexchange service the rate integration policy that previously was applied only to AT&T.<sup>115</sup> AMSC's services would appear to fall within the definition of interstate interexchange telecommunications services subject to Section 254(g). The decision referred to by AMSC was a Bureau decision that permitted an AMSC tariff to take effect without any finding of lawfulness.<sup>116</sup> It did not establish any policy of excluding AMSC services from rate integration. Accordingly, we reject AMSC's arguments on this issue.

## 2. U.S. Territories and Possessions

### a. Background

55. In the NPRM, we noted that "State" is defined in the Communications Act to include all U.S. territories and possessions.<sup>117</sup> Thus, we noted that the 1996 Act extends rate integration to U.S. territories and possessions, including Guam and the Northern Marianas, because rate integration obligations apply to providers of interexchange services between "states."<sup>118</sup> We proposed "to adopt a rule requiring that 'a provider of interstate interexchange

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<sup>114</sup>See 47 U.S.C. § 160.

<sup>115</sup>Our rate integration policy also had applied to carriers that served offshore points such as GTE and Alascom. See, e.g., *In re Application of GTE Corp.*, 94 FCC 2d 235, 258-60 & 263 (1983); *In re Application of Alascom Inc.*, 11 FCC Rcd 732, 743-48 (1995).

<sup>116</sup>*In re AMSC Subsidiary Corp.*, Order, 8 FCC Rcd 2871 (1993).

<sup>117</sup>NPRM ¶ 77 (citing 47 U.S.C. § 153(40)).

<sup>118</sup>U.S. territories and possessions are: Puerto Rico, the U.S. Virgin Islands, Guam, the Northern Marianas, American Samoa, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, the Midway Atoll, Navassa Island, the Palmyra Atoll, and Wake Island. As U.S. territories and possessions, they fall within

telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State."<sup>119</sup> We sought comment on appropriate mechanisms to implement rate integration to U.S. Territories and possessions that currently are not subject to our rate integration policy.<sup>120</sup> In addition, on June 5, 1996, the Chief of the Common Carrier Bureau requested the governors of Guam, the Northern Marianas, and American Samoa, as well as all carriers who provide interexchange service to those locations, to submit within two weeks a plan for implementing Section 254(g) with respect to those locations.<sup>121</sup>

b. Comments, Responses to Bureau Letters, and the Working Group

56. IXC's who offer services primarily, or exclusively, in Guam and the Northern Marianas generally support the Commission's proposed rate integration rule, but urge the

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the definition of "state" in the Communications Act of 1934, as amended, and carriers that serve those points are required under Section 254(g) and our rules to do so on a rate-integrated basis with service provided to other states. Of these locations, Puerto Rico and the U.S. Virgin Islands are already rate integrated. *See In re Integration of Rates and Services*, Memorandum Opinion, Order and Authorization, 61 FCC 2d 380, 392 (1976) (ordering AT&T to implement full rate and service integration for all services it provides to Hawaii, Alaska, Puerto Rico and the Virgin Islands). Of the other U.S. territories and possessions, only Guam, the Northern Marianas, and American Samoa have more than *de minimis* interstate interexchange telecommunications traffic that originates or terminates in the 50 states or other U.S. territories and possessions. *See* INDUSTRY ANALYSIS DIVISION, FCC, 1994 SECTION 43.61: INTERNATIONAL TELECOMMUNICATIONS DATA tbl. A1 (1996).

Starting in 1947, the United States administered the United Nations Trust Territories of the Pacific Islands, consisting of the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Northern Marianas. In negotiations over the last decade concerning the future status of these political entities, the Northern Marianas elected commonwealth status as a territory of the United States. The Marshall Islands, Micronesia, and Palau became independent, sovereign nations on October 21, 1986, November 3, 1986, and October 1, 1994, respectively, electing to enter into a Compact of Free Association with the United States. *See* 48 U.S.C.A. Ch. 14, refs. & annos.; *Temengil v. Trust Territory of the Pacific Islands*, 881 F.2d 647, 650-51 (9th Cir. 1989). Thus, Palau, the Federated States of Micronesia, and the Marshall Islands are not "states" within the meaning of that term in the Communications Act of 1934 to which carriers would be required to provide service on a rate-integrated basis.

<sup>119</sup>NPRM at ¶ 76 (quoting 47 U.S.C. § 254(g), as amended).

<sup>120</sup>*Id.* at ¶ 77.

<sup>121</sup>*See* Letters from Regina M. Keeney, Common Carrier Bureau Chief, to Mark Sisk, Counsel to the Governor of American Samoa; Robert F. Kelley Jr., Advisor to the Governor of Guam; Thomas K. Crowe, Counsel for the Commonwealth of the Northern Mariana Islands; David W. Carpenter, Counsel to AT&T Corp.; Raul R. Rodriguez, Counsel to CLDS.; Gail L. Polivy, Senior Attorney for GTE Services Corp.; Margaret L. Tobey, Counsel to IT&E Overseas Inc.; Donna N. Lampert, Counsel to JAMA Corp.; Donald J. Elardo, Director of Regulatory Law for MCI Telecommunications Corp.; Eric Fishman, Counsel to PCI Communications Inc.; and Leon M. Kestenbaum, Vice President of Regulatory Affairs for Sprint Corp. (June 5, 1996.)

Commission to delay implementing rate integration for a variety of reasons.<sup>122</sup> IT&E, for example, urges a delay until Guam and the Commonwealth of Northern Mariana Islands are served by domestic satellites, rather than as now by INTELSAT, which costs almost four times as much as domestic satellites.<sup>123</sup> GTE contends that rate integration must be implemented slowly because its wholly owned affiliate, the Micronesian Telecommunications Company (MTC), cannot compete with nationwide providers of interexchange service that can offer lower prices by spreading their costs over a larger customer base.<sup>124</sup> CLDS asserts that rate integration for Guam and the Northern Marianas is "fundamentally inconsistent" with the Commission's rationale for requiring rate integration to Alaska, Hawaii, Puerto Rico, and the Virgin Islands, which CLDS says was the availability of domestic satellite service to those points.<sup>125</sup>

57. The Governor of Guam and the Guam Telephone Authority (GTA), in comments filed jointly, and the Governor of the Northern Marianas, claim that the Commission is required by statute to mandate rate integration for Guam and the Northern Marianas and may not forbear from implementing that mandate.<sup>126</sup> Guam also rejects CLDS's claim that rate integration should not be extended to Guam and the Northern Marianas because these territories are not served by domestic satellites. Guam asserts that "nothing in the [1996 Act] limits [rate integration] only to those points that can be reached by domestic satellite."<sup>127</sup> The Northern Marianas further notes that, although the Commission has stated that the availability of domestic satellites was a "catalyst" for integrating rates to Hawaii and Alaska, the Commission explicitly held that "implementation of rate integration does not, and cannot, depend on the actual use of domestic satellite facilities."<sup>128</sup> Hence, the Northern Marianas argues, the Commission has made clear that distance insensitivity is not a

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<sup>122</sup>GTE Comments at 13-14, 21-22; IT&E Comments at 1-2, 14-15; JAMA Corp. Comments at 2-3.

<sup>123</sup>IT&E Comments at 15-20; GTE Comments at 20 (monthly charges for INTELSAT are \$35,880 while similar rate for domestic satellite service is \$9,920).

<sup>124</sup>See, e.g., GTE Comments at 21.

<sup>125</sup>CLDS Comments at 4-7.

<sup>126</sup>Guam and the GTA Joint Reply Comments at 4-5 (Guam Joint Reply); Northern Marianas Reply Comments at 9-13; see also Guam PUC Comments at 2 (rate integration critical for Guam). The Northern Marianas also notes that the Commission did not propose to forbear or seek comment on forbearance with respect to rate integration. Northern Marianas Reply Comments at 9 n.20.

<sup>127</sup>Guam Joint Reply Comments at 6. Guam also notes that, in fact, Intelsat satellites provide distance insensitive service to Guam. Guam Joint Reply Comments at 7.

<sup>128</sup>Northern Marianas Reply Comments at 8 (quoting *In re* Integration of Rates and Services, Memorandum Opinion, 62 FCC 2d 693, 695 (1976)).

prerequisite for the implementation of rate integration.<sup>129</sup>

58. IXC's also argue that rate integration should apply only to the standard interexchange service package.<sup>130</sup> Guam and the Northern Marianas oppose this proposal.<sup>131</sup> The Northern Marianas argue that the 1996 Act unambiguously requires all services provided by an IXC to be subject to rate integration.<sup>132</sup> Guam claims that carriers are required to provide MTS and private line services at integrated and averaged rates, and, although carriers may offer promotions and discounts, carriers should not exclude Guam from any service that is offered on a nationwide basis.<sup>133</sup>

59. In response to the Bureau's request for rate integration plans, Guam (jointly with the GTA) and the Northern Marianas propose that the Commission adopt rate integration rules that would take effect immediately but permit providers of interexchange service to implement rate integration after Guam and the Northern Marianas become part of the North American Numbering Plan (NANP) and are provided Feature Group D's "1+" equal access dialing.<sup>134</sup> Guam also suggests that integration take place concurrently with GTA's adoption of cost-based interstate access charges.<sup>135</sup> All three events are scheduled to occur by July 1, 1997.<sup>136</sup> Guam also proposes allowing carriers to offer integrated rates by expanding existing mileage bands, creating new mileage bands, or using postalized rates.<sup>137</sup> Furthermore, Guam suggests that the Commission designate Comsat, as well as carriers providing domestic interstate service on non-Intelsat facilities, as eligible telecommunications carriers so that they can receive universal service support funding.<sup>138</sup> American Samoa believes that its "people

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<sup>129</sup>*Id.* at 7-8.

<sup>130</sup>Cable and Wireless Comments at 5-6; Frontier Comments at 8-9; TRA Comments at 29.

<sup>131</sup>Guam Joint Reply Comments at 8; Northern Marianas Reply Comments at 17-18.

<sup>132</sup>Northern Marianas Reply Comments at 17.

<sup>133</sup>Guam Joint Reply Comments at 8.

<sup>134</sup>*See* Letter from the Governor of Guam and the GTA to Regina M. Keeney, Chief of the Common Carrier Bureau 3-4 (June 20, 1996); Letter from Thomas K. Crowe, Counsel for the Commonwealth of the Northern Mariana Islands, to Regina M. Keeney, Chief of the Common Carrier Bureau 3 (June 19, 1996).

<sup>135</sup>Letter from the Governor of Guam, at 3-4.

<sup>136</sup>*See id.* at 3 (June 20, 1996); Letter from Thomas K. Crowe, at 3 (June 19, 1996).

<sup>137</sup>*See* Letter from the Governor of Guam, at 2 (June 20, 1996).

<sup>138</sup>*See id.* at 6-7.

enjoy excellent long distance service at reasonable rates," and did not submit a plan because it has "concluded that [it has] already achieved the benefits of rate integration."<sup>139</sup>

60. In response to the Common Carrier Bureau's request for rate integration plans, none of the interexchange service providers presents detailed integration plans.<sup>140</sup> AT&T states that it cannot do so because Guam and the Northern Marianas are not yet part of the North American Numbering Plan, and because it has not decided whether to add a new mileage band or extend its longest existing rate band.<sup>141</sup> MCI states that it cannot yet provide a plan detailing exact rates and services because it does not want to disclose proposed rates to potential competitors.<sup>142</sup> PCI and IT&E argue that the request for a rate proposal is premature because the Commission has not yet adopted rate averaging and rate integration rules.<sup>143</sup>

61. Sprint, MCI, and IT&E state they would integrate Guam and the Northern Marianas into their existing interstate interexchange rate structures after July 1997, when Guam and the Northern Marianas are scheduled to become part of NANP.<sup>144</sup> Sprint states it will include Guam and the Northern Marianas by creating one or two additional mileage bands.<sup>145</sup> Sprint states that it expects to offer service at rates significantly lower than existing rates offered by other carriers, provided that the GTA lowers its access charges to levels

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<sup>139</sup>Letter from A.P. Lutali, Governor of American Samoa, to Regina M. Keeney, Chief of the Common Carrier Bureau 1-2 (June 12, 1996).

<sup>140</sup>See Letter from R. Gerard Salemmé, Vice President of Government Affairs for AT&T, to Regina M. Keeney, Chief of the Common Carrier Bureau (June 19, 1996); Letter from Raul R. Rodriguez and David S. Keir, Counsel to CLDS, to Regina M. Keeney, Chief of the Common Carrier Bureau (June 21, 1996); Letter from Gail Polivy, Attorney for GTE Service Corp., to Regina M. Keeney, Chief of the Common Carrier Bureau (June 20, 1996); Letter from Margaret L. Tobey and Phuong N. Pham, attorneys for IT&E Overseas Inc., to Regina M. Keeney, Chief of the Common Carrier Bureau (June 19, 1996); Letter from Donald J. Elardo, Director of Regulatory Law for MCI, to Regina M. Keeney, Chief of the Common Carrier Bureau (June 19, 1996); Letter from Eric Fishman, Counsel for PCI Communications Inc., to Regina M. Keeney, Chief of the Common Carrier Bureau (June 19, 1996); Letter from Leon M. Kestenbaum, Vice President of Regulatory Affairs for Sprint, to Regina M. Keeney, Chief of the Common Carrier Bureau (June 19, 1996).

<sup>141</sup>See Letter from R. Gerard Salemmé, at 2.

<sup>142</sup>Letter from Donald J. Elardo, at 2.

<sup>143</sup>Letter from Eric Fishman, at n.1; Letter from Margaret L. Tobey, at 1.

<sup>144</sup>Letter from Leon M. Kestenbaum, at 2; Letter from Donald J. Elardo, at 1-2; Letter from Margaret L. Tobey, at 2-3 (June 19, 1996).

<sup>145</sup>Letter from Leon M. Kestenbaum, Vice President of Regulatory Affairs for Sprint, to Regina M. Keeney, Chief of the Common Carrier Bureau 2 (June 19, 1996).

comparable to those of similar LECs that serve subscribers on the U.S. mainland.<sup>146</sup> MCI states it will either extend its longest existing band or create a new band to include Guam and the Northern Marianas.<sup>147</sup> PCI and IT&E contend that they are not subject to Section 254(g) because the statute applies only to national carriers that provide service to subscribers in multiple states.<sup>148</sup> PCI and IT&E also argue that in any event their current rate schedules are fully integrated because they originate services only from Guam and the Northern Marianas.<sup>149</sup>

62. GTE asserts that the existing rate structure of its affiliate, MTC, already complies with rate integration because it only originates traffic from the Northern Marianas and bases its rates on the cost of routing calls through expensive international satellites.<sup>150</sup> GTE further argues that the statutory language requiring "each such provider" to integrate rates for "its subscribers" does not give the Commission authority to require MTC to integrate its rates with other affiliates of GTE.<sup>151</sup> Instead, according to GTE, each affiliate constitutes a separate provider within the meaning of the statute.<sup>152</sup>

63. AT&T opposes reclassifying service to Guam, the Northern Marianas, and American Samoa as "domestic" rather than "international" because it could lead foreign carriers to claim that these locations are entry points for calls to subscribers in the United States, thereby increasing AT&T's costs for delivering those calls to destinations on the U.S. mainland.<sup>153</sup>

64. On July 8 and 9, 1996, the Guam/Northern Marianas Working Group on Rate Integration, consisting of representatives of the Governors of Guam and the Northern

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<sup>146</sup>Letter from Leon M. Kestenbaum, at 3.

<sup>147</sup>Letter from Donald J. Elardo, Director of Regulatory Law for MCI, to Regina M. Keeney, Chief of the Common Carrier Bureau 1-2 (June 19, 1996).

<sup>148</sup>Letter from Eric Fishman, Counsel for PCI Communications Inc., to Regina M. Keeney, Chief of the Common Carrier Bureau 2 (June 19, 1996); Letter from Margaret L. Tobey and Phuong N. Pham, attorneys for IT&E Overseas Inc., to Regina M. Keeney, Chief of the Common Carrier Bureau 4 (June 19, 1996).

<sup>149</sup>Letter from Eric Fishman, at 2; Letter from Margaret L. Tobey, at 4.

<sup>150</sup>Letter from Gail Polivy, Attorney for GTE Service Corp., to Regina M. Keeney, Chief of the Common Carrier Bureau 7 (June 20, 1996).

<sup>151</sup>*Id.* at 2-3.

<sup>152</sup>*Id.*

<sup>153</sup>*See* Letter from R. Gerard Salemme, Vice President of Government Affairs for AT&T, to Regina M. Keeney, Chief of the Common Carrier Bureau 3 (June 19, 1996).

Marianas, and the carriers that provide interexchange service to those points, met in Washington, D.C., to discuss the implementation of Section 254(g) for services provided to Guam and the Northern Marianas.<sup>154</sup> The Working Group adopted seven substantive resolutions that it believes should guide rate integration for these offshore points:

Rate integration should involve the incorporation of Guam and the Northern Marianas into the domestic rate pattern for message telephone service (MTS). Each provider of interstate interexchange telecommunications services should establish rates consistent with its rate-making methodology used for that service elsewhere in the United States, in compliance with the Act;

As far as practicable, implementation of rate integration should be contingent upon the inclusion of Guam and the Northern Marianas within the North American Numbering Plan and conversion to equal access and cost-based interstate access tariffs (currently anticipated on or about 1 July 1997);

It is not possible to determine at this time whether support mechanisms for rate integrated services will be required to meet the goals of the [1996 Telecommunications] Act. Accordingly, if required, support mechanisms should be addressed after the release of the FCC ruling on rate integration and in the context of the notice of proposed rulemaking and order establishing the Universal Service Joint Board (CC Docket No. 96-45);

Each provider of interstate interexchange telecommunications services, other than MTS, to the extent those services are offered between Guam or the Northern Marianas and any other state, should establish rates consistent with its rate-making methodology used for those services elsewhere in the United States, in compliance with the Act;

The implementation of rate integration should not discourage flexibility and competitive responses among interstate

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<sup>154</sup>See Letter from Robert F. Kelley, Advisor to the Governor of Guam, and Dave Ecret, Special Assistant to the Governor of Guam, to William F. Caton, Secretary to the Federal Communications Commission, at Appendix A (July 9, 1996). Present were representatives from the Northern Marianas, Guam, PCI Communications Inc., the GTA, NECA, Sprint, Sprint Guam, MCI, IT&E Overseas Inc., Coopers & Lybrand, GTE/MTC, and the Guam Public Utilities Commission. *Id.* at Appendix A. Although invited, AT&T was not present. *Id.* Commission staff also attended the meetings as observers.

telecommunications providers serving Guam or the Northern Marianas;

Optional calling plans, promotions, or discounts will be offered to subscribers in Guam and the Northern Marianas in compliance with the Act;

None of these Resolutions shall supersede any provisions of the Act, or limit or restrict the authority of the Federal Communications Commission under the Act.<sup>155</sup>

65. The Working Group plans to meet again in late August to continue to work towards rate integration in light of requirements adopted by the Commission to implement Section 254(g).<sup>156</sup>

c. Discussion

66. In making the Section 254(g) rate integration provision applicable to interstate interexchange services provided between "states," as defined in the Communications Act,<sup>157</sup> Congress made rate integration applicable to interexchange services provided to U.S. possessions and territories, including Guam, the Northern Marianas, and American Samoa. Further, rate integration applies to all interstate interexchange telecommunications services as defined in the Communications Act.<sup>158</sup> Accordingly, under our rate integration rule implementing 254(g), providers of interexchange service to these points must do so on an integrated basis with services they provide to other states.

67. We believe that the resolutions the Working Group adopted regarding rate integration for Guam and the Northern Marianas provide a reasonable framework to guide carriers towards implementing rate integration. Thus, a carrier should establish rates for services provided to Guam and the Northern Marianas consistent with the rate methodology it employs for services it provides to other states. Similarly, to the extent that a provider of interexchange service offers optional calling plans, contract tariffs, discounts, promotions, and private line services to its subscribers on the mainland, it should use the same ratemaking methodology and rate structure when offering those services to its subscribers in Guam or the

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<sup>155</sup>*Id.* at Appendix B.

<sup>156</sup>*Id.* at 2.

<sup>157</sup>*See* 47 U.S.C. § 153(40).

<sup>158</sup>*See* 47 U.S.C. § 153(22), as amended (defining "interstate communication"), and § 153(46), as amended (defining "telecommunication service").



Northern Marianas. In addition, we do not view rate integration as inconsistent with flexibility and competitive responses by carriers, although carriers must continue to comply with rate integration requirements for these offshore points. We also agree with the Working Group that cost support and universal service issues should be addressed in the first instance by the Universal Service Joint Board.<sup>159</sup> Guam has specifically raised these issues in CC Docket No. 96-45.<sup>160</sup> Accordingly, we will address those issues in the context of any Joint Board recommendation. For purposes of our decision today, however, we do not view establishment of cost-support mechanisms as a precondition of rate integration. Nor have they been justified on the present record. Thus, we reject requests that we establish, or further consider, any cost-support mechanisms in this docket.

68. The Working Group resolutions urge that rate integration for services provided to Guam and the Northern Marianas should take place concurrently with, or shortly after, the inclusion of Guam and the Northern Marianas into the NANP, the implementation of Feature Group D service, and the GTA's revision to its access charge structure. All three events are expected to occur by July 1, 1997. We do not view these developments as preconditions for rate integration of services provided to these points. Rather, the statute requires rate integration regardless of whether these developments occur. However, we believe that these developments will facilitate rate integration. Inclusion of Guam and the Northern Marianas in the NANP will help carriers integrate them into their nationwide service plans. Implementation of Feature Group D will provide subscribers with high-quality equal access to providers of interexchange service serving Guam. Revision of access charges by GTA will help providers of interexchange service set final rate schedules for service to and from Guam. Accordingly, we require providers of interexchange service to integrate services offered to subscribers in Guam and the Northern Marianas with services offered in other states no later than August 1, 1997. We additionally require that carriers submit preliminary plans to achieve rate integration no later than February 1, 1997, and final plans no later than June 1, 1997. These plans will permit the Commission to review progress toward achieving rate integration, as required by the 1996 Act. The preliminary plans need not include rates, but at a minimum should resolve service and rate-band issues. Final plans shall include a rate schedule. Carriers may integrate these points by expanding mileage bands, adding mileage bands, offering postalized rates, or other means that achieve rate integration. We also require that any rate changes between the adoption date of this Report and Order and August 1, 1997, must be consistent with achieving rate integration by August 1, 1997. We also believe that it would facilitate resolution of any further regulatory issues concerning rate integration for these points if the Common Carrier Bureau addresses them in the first instance. Accordingly,

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<sup>159</sup>See Letter from Robert F. Kelley, Advisor to the Governor of Guam, and Dave Ecret, Special Assistant to the Governor of Guam, to William F. Caton, Secretary to the Federal Communications Commission, at Appendix B (July 9, 1996).

<sup>160</sup>Guam Reply Comments in CC Docket No. 96-45, at 5-7.

we will delegate to the Chief, Common Carrier Bureau, authority to resolve any issues concerning carriers' plans for rate integration for these offshore points.

69. We reject GTE's view that Section 254(g) does not require MTC to integrate rates with other GTE affiliates. The statute mandates that the Commission require rate integration among all states, territories, and possessions, and this goal is best achieved by interpreting "provider" to include parent companies that, through affiliates, provide service in more than one state. Moreover, nothing in the record supports a finding that Congress intended to allow providers of interexchange service to avoid rate integration by establishing or using their existing subsidiaries to provide service in limited areas. Thus, we determine that GTE, for the purposes of Section 254(g), constitutes a "provider" of interexchange services within the meaning of that section, and that it must integrate rates across affiliates. Accordingly, we require GTE to comply with the same timetable and requirements as the other carriers serving the Northern Marianas and Guam.

70. We reject the contentions of PCI and IT&E that they are not subject to the rate-integration obligation. As noted, Section 254 applies to all providers of interexchange service. Therefore, PCI & IT&E must provide Guam and the Northern Marianas service on a rate-integrated basis. Based on the present record, however, there is insufficient evidence to evaluate whether PCI's and IT&E's rates for service originating in Guam and the Northern Marianas comply with Section 254(g). Consequently, we will also require PCI and IT&E to abide by the same timetable and requirements as the other carriers serving the Northern Marianas and Guam. They may demonstrate with more particularity that their current rates comply with rate integration when they submit their plans.

71. Although carriers serving American Samoa are required to provide service on a rate-integrated basis, American Samoa has stated that it believes that rates for services provided to American Samoa are already rate integrated. Nevertheless, we will also direct providers of interexchange service serving American Samoa to submit plans for American Samoa in order to ensure that they will comply with the statute. To the extent services are provided to other U.S. possessions and territories by carriers subject to Section 254(g), the record does not reflect what carriers serve some of these points, such as Wake Island and Midway Island, or whether service is provided in special ways, such as in cooperation with military authorities, that might affect provision of service on a rate-integrated basis to these points. Accordingly, we are directing the Common Carrier Bureau to investigate service arrangements for these points and to take such steps as are necessary to assure compliance with Section 254(g) by August 1, 1997.

72. We also believe that AT&T's concerns about termination of foreign traffic in Guam, the Northern Marianas, and American Samoa do not justify delaying rate integration. Our decision to extend rate integration to Guam is intended to benefit U.S. consumers. We do not by this decision, however, affect the classification or treatment of the underlying costs

of facilities between these offshore points and other U.S. points for purposes of interconnection arrangements with foreign carriers.

73. Our requirement that carriers implement rate integration by August 1, 1997, complies with Section 254(g). That section requires us to adopt rules requiring rate integration for Guam, the Northern Marianas and American Samoa by August 8, 1996. We do not read this provision as mandating rate integration for all points by that date. Instead, we interpret the statute to permit a reasonable transition period for the offshore points to which our rate integration policy is being applied for the first time.

#### D. AT&T'S COMMITMENTS

##### 1. Background

74. In the 1995 *AT&T Reclassification* proceeding, AT&T committed, for three years, to give five days' advance notice before adopting new geographically deaveraged tariffs for interstate residential direct dial services.<sup>161</sup> AT&T also committed that it would continue to comply with Commission orders regarding rate integration between the contiguous forty-eight states and Alaska, Hawaii, Puerto Rico, and the Virgin Islands.<sup>162</sup> The NPRM proposed that AT&T would be subject to the new rules adopted by the Commission and released from its commitments when the new rules are adopted.

##### 2. Comments

75. AT&T believes that the rules adopted in this proceeding "will supersede AT&T's existing commitments in those areas."<sup>163</sup> AT&T also notes that, although its rate integration commitments with respect to Alaska "would technically continue in effect, AT&T assumes that the policy adopted here will also apply in Alaska."<sup>164</sup> MCI believes that AT&T should not be bound by any commitments "other than those that may arise from this proceeding and apply equally to all non-dominant carriers."<sup>165</sup>

76. Hawaii argues that AT&T's commitment to provide five days' notice is not the

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<sup>161</sup>See *In re* Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, Order, 11 FCC Rcd 3271, 3333-34, 3349 (1995) (AT&T Non-Dominance Order).

<sup>162</sup>See *id.*

<sup>163</sup>AT&T Comments at 28 n.52.

<sup>164</sup>*Id.*

<sup>165</sup>MCI Comments at 36.

issue.<sup>166</sup> Instead, the State asserts that because Congress reaffirmed the goal of universal service, AT&T cannot be relieved of its commitment to offer geographically averaged residential direct dial service to Hawaii.<sup>167</sup> Alaska, too, claims that the question of whether AT&T's commitments continue in effect is not significant. Rather, the more important issue is that providers of interexchange service should not be permitted to deaverage their rates "regardless of how much notice is given."<sup>168</sup>

77. The Northern Marianas argues that AT&T should be required to comply with the 1996 Act, which requires integration with Guam and the Northern Marianas, rather than with the commitments, which do not commit AT&T to integrate rates with Guam and the Northern Marianas.<sup>169</sup>

### 3. Discussion

78. The rules we adopt in this proceeding will require AT&T to provide interexchange service at geographically averaged and integrated rates. We believe these requirements incorporate the Commission's existing rate averaging and rate integration policies and, thus, should supersede the commitments AT&T made in the *AT&T Reclassification* proceeding concerning rate averaging and rate integration. Accordingly, we release AT&T from its commitments to continue to comply with the Commission's orders regarding rate integration and to file any tariff containing a geographically deaveraged rate on five business days' notice. We do not release AT&T from its more specific commitments concerning Hawaii and Alaska.<sup>170</sup> Nonetheless, AT&T is affirmatively bound by the rules we establish in this Report and Order, and by our prior opinions, rules and orders on geographic rate averaging and rate integration, which the rules incorporate.

## IV. FINAL REGULATORY FLEXIBILITY ANALYSIS

79. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), we incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the Notice of Proposed Rulemaking in this proceeding (NPRM). The Commission sought written public comments on the proposals in the NPRM, including on the IRFA. The Commission's Final

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<sup>166</sup>Hawaii Comments at 13-14.

<sup>167</sup>*Id.*

<sup>168</sup>Alaska Comments at 8.

<sup>169</sup>Northern Marianas Comments at 13-14.

<sup>170</sup>See, e.g., *In re Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271, 3333-34 & n. 329 (1995) (AT&T Non-Dominance Order).

Regulatory Flexibility Analysis (FRFA) in this Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996).<sup>171</sup>

80. Need for and purposes of this action: The Commission promulgates the rules in this Report and Order to implement Section 254(g) of the Communication Act of 1934, as amended by the Telecommunications Act of 1996. In accordance with Section 254(g), our implementing rules will:

require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.<sup>172</sup>

The objective of these rules is "to incorporate the policies of geographic rate averaging and rate integration of interexchange services in order to ensure that subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban subscribers."<sup>173</sup>

81. Description and estimate of small entities affected: The Regulatory Flexibility Act defines "small entity" to include the definition of "small business concern" under the Small Business Act, 15 U.S.C. § 632.<sup>174</sup> Under the Small Business Act, a "small business concern" is one that (1) is independently owned and operated, (2) is not dominant in its field of operation, and (3) meets any additional criteria established by the Small Business Administration (SBA).<sup>175</sup> Our geographic averaging and rate integration rules will apply to all providers of interexchange service. The SBA has not developed a definition of small entities specifically applicable to providers of interexchange service. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone

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<sup>171</sup> Subtitle II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. § 601 *et seq.*

<sup>172</sup> *In re* Policy and Rules Concerning the Interstate, Interexchange Marketplace, NPRM, CC Docket No. 96-61, FCC 96-123 (rel. March 25, 1996).

<sup>173</sup> See H.R. REP. NO. 458, 104th Cong., 2d Sess. 132 (1996) (joint explanatory statement).

<sup>174</sup> See 5 U.S.C. § 601(6) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632).

<sup>175</sup> See 15 U.S.C. § 632(1)(a).

(wireless) companies. According to SBA regulations, a telephone communications company other than a radiotelephone company is a small business concern if it has fewer than 1,500 employees.<sup>176</sup>

82. The most relevant employee data available from the SBA does not enable us to make a meaningful estimate of the number of providers of interexchange service that are small entities because it is based upon a 1992 Census of Transportation, Communications, and Utilities survey from which we can only calculate the average number of people employed by various-sized telephone entities other than radiotelephone companies.<sup>177</sup> Based on a Commission staff report entitled *Long Distant Market Shares: Fourth Quarter, 1995*, however, we estimate that approximately 500 carriers provide interexchange service.<sup>178</sup> Some of these carriers are not independently owned and operated, or have more than 1,500 employees. Consequently, we estimate that our geographic averaging and rate integration rules will apply to less than 500 "small entities." We are unable on the present record to estimate with more particularity how many of these entities would be considered small for the purposes of the Regulatory Flexibility Act.

83. Summary of public comments on the Initial Regulatory Flexibility Analysis: No comments specifically addressed the Commission's initial regulatory flexibility analysis. However, a number of associations that represent, at least to some extent, the interests of small telecommunications providers, generally supported the Commission's proposed rules to implement geographic averaging and rate integration.<sup>179</sup> Other commenters asserted that these rules would harm small regional providers of interexchange service in high-cost areas, arguing that such providers would be unable to compete with nationwide carriers that can charge lower rates by spreading their costs over a larger customer base.<sup>180</sup> A few suggested that

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<sup>176</sup>See 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4813.

<sup>177</sup>See BUREAU OF THE CENSUS, U.S. DEPARTMENT OF COMMERCE, 1992 CENSUS OF TRANSPORTATION, COMMUNICATIONS, AND UTILITIES: ESTABLISHMENT AND FIRM SIZE, tbl. 4 (1995) (Revenue Size of Firms: 1992, SIC Code 4813).

<sup>178</sup>See INDUSTRY ANALYSIS DIVISION, FEDERAL COMMUNICATIONS COMMISSION, LONG DISTANCE MARKET SHARES: FOURTH QUARTER 1995, at 3 (1996).

<sup>179</sup>See CompTel Comments at 7; RTC Comments at 3; TRA Comments at 29; *see also* USTA Comments at 2-4 (expressing support for codification of the Section 254(g)'s language on rate averaging, but not discussing rate integration).

<sup>180</sup>See ACTA Comments at 7-9 (arguing that the access charges interexchange providers pay vary, that rate averaging would disproportionately burden smaller carriers serving high-cost areas, and that the Commission should account for these concerns in its rules, require access charges and other provider costs to be averaged, or forbear); MFS Communications Comments at 8-10 (arguing that the Commission should forbear from applying rate averaging requirements to carriers with less than 5 percent of the nation's access and presubscribed lines

subsidies or other support mechanisms might alleviate their concerns.<sup>181</sup> The record in this proceeding does not show that small interexchange service providers will be disproportionately harmed by implementation of rate integration. The practical impact of our rules will be to require all providers of interexchange service, including those that are small entities, to set rates on a geographically averaged and rate-integrated basis.

84. Summary of reporting, recordkeeping and other compliance requirements: To comply with this Report and Order, carriers must charge rural and high-cost area customers for interexchange service no more than they charge urban customers,<sup>182</sup> and must charge customers for such services in one state no more than they charge customers in any other state.<sup>183</sup> The NPRM proposed requiring providers of interexchange telecommunications services to file certifications that they were complying with these requirements in the event the Commission decides to mandate permissive detariffing of interexchange services.<sup>184</sup> We will consider later in this proceeding what enforcement mechanisms may be necessary to support geographic averaging and rate integration when the Commission addresses the detariffing issue. We have proposed a requirement that AT&T, Sprint, MCI, IT&E, GTE, and PCI submit preliminary plans no later than February 1, 1997, to achieve rate integration of Guam, the Northern Marianas, American Samoa, and other offshore points, and final plans no later than June 1, 1997.<sup>185</sup> The preliminary plans need not include rates, but at a minimum should resolve service and rate-band issues. Final plans shall include a rate schedule. Carriers already have in place their own individualized rate schedules, which they have

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because such carriers have smaller customer bases over which to spread their costs, which are often higher than those of larger carriers, frequently because of high access charges in low-volume markets.); ACTA Comments at 10-11 (incorporating its geographic averaging comments, on the contention that rate integration raises nearly identical concerns for smaller carriers); CLDS Comments at 7-8 (arguing that integration's below-cost rates would discourage new carriers from entering the Guam and Northern Mariana markets); GTE Comments at 21 (arguing that small regional carriers with a limited calling base and high costs would have difficulty competing under integration against carriers with lower costs and larger customer bases over which to spread these costs); IT&E Comments at 20-22 (arguing that larger carriers can spread the costs for service to Guam and the Northern Marianas among their customers nationwide, but smaller carriers will be unable to subsidize below-cost rates mandated by rate integration).

<sup>181</sup>See IT&E Comments at 20-22 & n.40; Letter from the Governor of Guam and the GTA to Regina M. Keeney, Chief of the Common Carrier Bureau 6-7 (June 20, 1996).

<sup>182</sup>See *supra* ¶¶ 2, 9.

<sup>183</sup>See *supra* ¶¶ 2, 47, 52.

<sup>184</sup>*In re* Policy and Rules Concerning the Interstate, Interexchange Marketplace, NPRM, CC Docket No. 96-61, FCC 96-123, at ¶ 70 (rel. Mar. 25, 1996).

<sup>185</sup>See *supra* ¶¶ 68-70.

presumably tailored to the areas they provide service. Consequently, carriers' staff preparing the preliminary and final plans will likely need no special skills other than general familiarity with the new rate schedules that these entities are planning, or have chosen, to adopt to comply with the rate averaging and rate integration requirements.

85. Steps taken to minimize, consistent with statutory objectives, impact on small businesses: Section 254(g) reflects a congressional determination that the country's higher-cost, lower-volume markets should share in the technological advances and increased competition characteristic of the nation's telecommunications industry as a whole, and that interexchange rates should be provided throughout the nation on a geographically averaged and rate-integrated basis. As noted above, we have decided that the statutory objectives of Section 254(g) require us to apply our rules to all providers of interexchange service, including small ones.<sup>186</sup> We have chosen, however, to allow carriers to offer private line service and temporary promotions on a deaveraged basis.<sup>187</sup> In so doing, we have minimized the impact our rules might otherwise have had, and enable carriers to use such devices to enter new markets.

86. Significant alternatives considered and rejected: The Commission considered and rejected several significant alternatives. We could have reduced burdens on small carriers by exempting them from compliance through forbearance. However, we do not believe that forbearing at this time would be consistent with the congressional goals that underlie Section 254(g).<sup>188</sup> We could also have reduced burdens on small carriers by establishing cost-support mechanisms. However, the present record does not justify any such cost-support mechanisms.<sup>189</sup> Accordingly, we decline to adopt these alternative measures for small carriers.

87. Report to Congress: The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

## V. FINAL PAPERWORK REDUCTION ANALYSIS

88. We have decided to require AT&T, Sprint, MCI, IT&E, GTE, and PCI to submit preliminary and final plans to achieve rate integration of Guam, the Northern

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<sup>186</sup>See *supra* ¶¶ 3, 9, 38-40, 52-54, 66, 69-70.

<sup>187</sup>See *supra* ¶¶ 21-30.

<sup>188</sup>See *supra* ¶¶ 31-32, 38-40, 52-53.

<sup>189</sup>See *supra* ¶ 67.



Marianas, and American Samoa by August 1, 1997.<sup>190</sup> The requirement of these plans constitutes a new "collection of information," within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501-3520. Implementation of these requirements will be subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act.

## VI. ORDERING CLAUSES

89. Accordingly, IT IS ORDERED that pursuant to authority contained in sections 1, 4(i), 10, 201-205, 214(e), 215 and 254(g) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 160, 201-205, 214(e) and 254(g), Part 64 of the Commission's rules are Amended as set forth in Appendix B hereto.

90. IT IS FURTHER ORDERED that the policies, rules and requirements set forth herein ARE ADOPTED.

91. IT IS FURTHER ORDERED that the policies, rules and requirements adopted herein SHALL BE EFFECTIVE 30 days after publication in the Federal Register.

92. IT IS FURTHER ORDERED that with respect to interexchange services provided between any U.S. state, territory or, possession and Guam, the Northern Marianas, or American Samoa, AT&T, GTE, MCI, Sprint, PCI, and IT&E shall:

- (1) submit to the Commission no later than February 1, 1997, preliminary plans to achieve rate integration by August 1, 1997, with respect to those points; and
- (2) submit to the Commission no later than June 1, 1997, final plans to achieve rate integration by August 1, 1997, with respect to those points.

93. IT IS FURTHER ORDERED that AT&T is released from the commitments it made in the *AT&T Reclassification* proceeding concerning rate averaging and rate integration, as described herein.

94. IT IS FURTHER ORDERED that the Chief, Common Carrier Bureau, is delegated authority to resolve any regulatory issues concerning implementation of rate integration for offshore points consistent with this Report and Order. The Common Carrier Bureau is directed to investigate service arrangements for offshore points, as discussed in paragraph 71, and to take such steps as are necessary to ensure compliance with Section 254(g), by August 1, 1997, for such offshore points.

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<sup>190</sup>See *supra* ¶¶ 68-70.

Federal Communications Commission

*William F. Caton*

William F. Caton

Acting Secretary

**Appendix A - List of Parties**  
**(CC Docket No. 91-61)**

**Comments filed on or before April 19, 1996**  
**in response to Notice of Proposed Rulemaking**

Alabama Public Service Commission (Alabama PSC)  
Alaska  
America's Carriers Telecommunication Association (ACTA)  
American Petroleum Institute  
American Public Communications Council  
Ameritech  
American Mobile Satellite Carriers Subsidiary Corp. (AMSC)  
AT&T  
Bell Atlantic  
BellSouth Corp.  
Cable & Wireless Inc.  
Collins, Frank  
Columbia Long Distance Services Inc. (CLDS)  
Competitive Telecommunications Association (CompTel)  
Florida Public Service Commission (Florida PSC)  
Frontier Corp.  
General Communications Inc.  
General Services Administration  
GTE Service Corp.  
Guam, Governor of, and the Guam Telephone Authority (GTA), jointly  
Guam Public Utilities Commission (Guam PUC)  
Hawaii  
Hunter, Gerald  
Iowa Utilities Board  
IT&E Overseas Inc.  
JAMA Corp.  
John Staurulakis Inc.  
LDDS Worldcom Inc.  
Lee, Paul  
Loflin, Kevin  
MCI  
MFS Communications Co.  
Missouri Public Service Commission (Missouri PSC)  
National Association of Regulatory Utility Commissioners (NARUC)  
Northern Mariana Islands  
NYNEX

Ohio, Public Utilities Commission of (Ohio PUC)  
Ohio Consumers' Counsel (OCC)  
Orlic, Peggy  
Pacific Telesis Group  
Pennsylvania Office of Consumer Advocate  
Rural Telephone Coalition (RTC)  
SBC Communications Inc.  
Scherers Communications Group  
Southern New England Telephone Co.  
Sprint Corp.  
Stark, Kristine  
Sussman, Michael  
TCA Inc.  
TDS Telecommunications Corp.  
Telecommunications Resellers Association (TRA)  
United States Telephone Association (USTA)  
US West Inc.  
Vanguard Cellular Systems Inc.  
Ward, Harvey William  
Washington Utilities and Transportation Commission (Washington UTC)  
Zankle Worldwide Telecom

**Late-filed Comments**

Louisiana Public Service Commission (Louisiana PSC) (filed April 22, 1996)  
Pennsylvania Public Utility Commission (Pennsylvania PUC) (filed April 22, 1996)

**Reply Comments filed  
on or before May 3, 1996**

Alaska  
ALLTEL Corporate Services Inc.  
Ameritech  
AT&T  
Bell Atlantic  
BellSouth Corp.  
Citizens Utilities Co.  
Competitive Telecommunications Association (CompTel)  
General Communications Inc.  
General Services Administration  
GTE Service Corp.  
Guam, Governor of, and the Guam Telephone Authority (GTA), jointly

Guam Public Utility Commission (Guam PUC)  
Hawaii  
IT&E Overseas Inc.  
LDDS WorldCom Inc.  
MCI  
MFS Communications Co.  
New York Department of Public Service (New York DPS)  
Northern Mariana Islands  
NYNEX Telephone Cos.  
Ohio Consumers' Counsel (OCC)  
PCI Communications Inc.  
Rural Telephone Coalition (RTC)  
SBC Communications Inc.  
Sprint Corp.  
United States Telephone Association (USTA)  
US West Inc.  
Vanguard Cellular Systems Inc.

**Late-filed Reply Comments**

Telecommunications Resellers Association (TRA) (May 6, 1996)

## Appendix B

### Amendments to the Code of Federal Regulations

#### PART 64 -- MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for Part 64 continues to read as follows:

AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 228, 226, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, 228, unless otherwise noted.

2. Subpart Q of Part 64 is added to read as follows:

#### PART 64 -- MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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##### SUBPART Q -- GEOGRAPHIC RATE AVERAGING AND RATE INTEGRATION

###### § 64.1701 Geographic Rate Averaging and Rate Integration

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##### SUBPART Q -- GEOGRAPHIC RATE AVERAGING AND RATE INTEGRATION

AUTHORITY: Secs. 1, 4(i), 201-205, 214(e), 215 and 254(g), as amended, 47 U.S.C. §§ 151, 154(i), 201-205, 214(e), 215 and 254(g).

###### § 64.1701 Geographic Rate Averaging and Rate Integration

(a) The rates charged by providers of interexchange telecommunications services to subscribers in rural and high-cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas.

(b) A provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each U.S. state at rates no higher than the rates charged to its subscribers in any other state.